

REMARKS

The addition of new claims 44-46 are respectfully submitted, support for which is found in the original specification. No new matter is included.

Reconsideration and withdrawal of the rejection of all the claims now in the application are respectfully requested in view of the following remarks.

Claims 21-29, 35, 36 and 41-43 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,571,192 to *Schönhöffer* ("*Schönhöffer* '192"). The Examiner contends that *Schönhöffer* '192 discloses in FIG. 2 a fusion implant comprising an implant member (2) having a first end, a second end and an outer wall (3) defining an internal cavity. The Examiner also contends that the valleys of the threaded surface on the outer wall can be interpreted as a plurality of grooves which encircle the whole circumference of the outer wall and segment the implant member into a plurality of ring-like segments. Each ring-like segment, the Examiner further contends, includes a plurality of apertures (9 & 10) extending in communication with the internal cavity. The Examiner contends that the *Schönhöffer* '192 implant also includes a plurality of end caps (1 & 1'). The Examiner also contends that claims 23, 24, 26, 27, 29, 36, 41 and 42 are anticipated as set forth on pages 3 and 4 of the Office Action.

Applicants respectfully traverse the rejection, as the implant member (2) of *Schönhöffer* '192 includes a threaded surface rather than the discreet grooves of the claimed invention. Such a threaded surface creates grooves which cannot segment the implant member into discreet ring-like segments as required by the claims. Instead, the threaded surface of *Schönhöffer* '192 would segment the implant into a spiral or ribbon like structure. For this reason alone, *Schönhöffer* '192

cannot anticipate independent claims 21 and 41, let alone any of the dependent claims.

Applicants also note that with respect to claim 36, it is plain that *Schönhöffer* '192 does not teach locking pins that allow the end cap to snap into the implant body. Rather, the plurality of peaks created by the threaded bore in each cap of *Schönhöffer* '192 are exactly that, threaded bores.

Claims 31-33 are rejected under 35 U.S.C. § 103(a) as being obvious over *Schönhöffer* '192 in view of U.S. Patent No. 6,015,436 to *Schönhöffer* ("*Schönhöffer* '436"). The Examiner contends that *Schönhöffer* '192 discloses the invention substantially as claimed; however, it does not disclose a plurality of spikes arranged radially about the face of the end caps. The Examiner therefore relies upon *Schönhöffer* '436 as teaching an implantable disk prosthesis comprising implant member (1) having a first end and a second end having a plurality of spikes (12) radially about the face of the first and second ends for the purpose of having a good attachment with the walls of the vertebrae (citing col. 4, lns. 13-24.) The Examiner concludes therefore that it would have been obvious to modify the distal ends of the *Schönhöffer* '192 implant to the distal ends spikes of *Schönhöffer* '436 in order to have a good attachment with the walls of the vertebrae.

Applicants respectfully traverse the rejection. As noted above, *Schönhöffer* '192 teaches an implant member having a threaded surface which cannot segment the implant member into discrete ring-like segments. *Schönhöffer* '436 does not supply what *Schönhöffer* '192 lacks. As such, the claimed invention cannot be obvious over *Schönhöffer* '192 in view of *Schönhöffer* '436. Reconsideration and withdrawal of this ground of rejection are therefore respectfully requested.

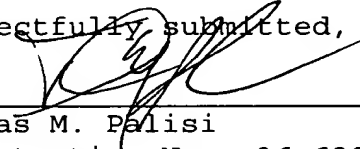
As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: October 9, 2003

Respectfully submitted,

By 
Thomas M. Palisi
Registration No.: 36,629
LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, LLP
600 South Avenue West
Westfield, New Jersey 07090
(908) 654-5000
Attorney for Applicant